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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,698	07/20/2006	Akifumi Hayashi	06-462/LH	7832
1933 7590 12/28/2009 FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
12/28/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/586,698

Applicant(s)

HAYASHI ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-12 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-11, 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/22)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 6, 2009 has been entered.

Response to Arguments

2. Applicant's arguments filed October 6, 2009 have been fully considered but they are not persuasive. As to the argument that the bond sections 52 of Datta do not meet the limitation of adhesion sections along the side portions in the longitudinal direction, it is noted that the features upon which applicant relies (i.e., that "along" means the entire length of the side portion in the longitudinal direction) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As to the argument that Datta does not disclose or suggest folding the side portions and bonding them to the topsheet to meet the claims as amended, applicant is directed to Fig. 11, which is a cross-sectional view of the article in Fig. 1, and Fig. 4, which is a top view of the article in Fig. 1. Fig. 4 illustrates the bonding regions 52. As stated in the rejection and not refuted by applicant, it would be obvious to one of ordinary skill in the art to try a different bonding configuration in which those bonding regions 52 bond the gathers and backsheet folded portions to the topsheet as opposed to the rest of the gather. Applicant is now referred to Fig. 11 where it is clear that, if

the gathers were bonded at their ends to the topsheet, flat portions and flat root portions as claimed would be formed. Therefore it is examiner's position that the article suggested by Datta and modified in the manner state dint he rejection would meet all of the limitations of amended claims 8-11 and 21.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on October 6, 2009 was filed after the mailing date of the final action on July 7, 2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 8-11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (WO 01/10372 A1).

With respect to **claims 8,21**: Datta discloses an absorbent article comprising a liquid-permeable topsheet 31 positioned at a surface 34 that is contactable with a human body, a non liquid-permeable backsheet 30 positioned at a surface opposite to the topsheet 31 and an absorbent body 32 provided between the topsheet and the backsheet. (Page 12, lines 2-5) Three-dimensional gathers are formed at the topsheet side to be raised at both side portions in a longitudinal direction of the absorbent body. (Figs. 4,11) The backsheet 30 includes folding portions which are folded up to the topsheet side along both side portions in a longitudinal direction of the absorbent body (see Fig. 3) Datta discloses that the topsheet includes adhesion sections along both side portions in the longitudinal direction of the absorbent body at each of which the corresponding attachment portion is folded up to the topsheet side and is adhered to the topsheet inasmuch as the attachment portion forms part of side flaps 40 wherein the side flaps 40 are folded over and bonded to the body-facing side of the absorbent assembly or core, which requires adhesion to the topsheet. (Page 16, lines 12-14)

Datta discloses locations 52 shown in Fig. 4 where the side flaps 40 including the folding portions of backsheet 30 are bonded to themselves and discloses that alternatively they can be bonded to the topsheet. It is examiner's position that it would be readily apparent to one of ordinary skill in the art to use those same locations 52 as locations for bonding the side flap with said folding portion to the topsheet rather than to itself. Therefore, while Datta does not explicitly disclose that the folding portions and side flaps as a whole are adhered to the topsheet at said locations, it would be obvious to one of ordinary skill in the art to modify the article of Datta such that the adhesion of side flaps 40 with said folding portions therein occurs at identical locations to the disclosed locations for bonding the flap to itself with a reasonable expectation of success to ensure the side flaps remain in position to perform the intended function of preventing leakage. The article fairly suggested by Datta meets the limitation of an adhesion section at

which the attachment portion is folded up to the topsheet side and which is adhered to the topsheet substantially along both side portions in the longitudinal direction of the absorbent body. The article suggested by Datta thus renders the limitation "wherein a part of each of the folding portions is adhered to the topsheet at a corresponding attachment portion to be flat along both side portions in the longitudinal direction of the absorbent body" unpatentable. The adhesion of the folding portion to the topsheet rather than the rest of the gather will necessarily form flat portions along the side portions. The top portion as can be seen in Fig. 11 will be unfolded and parallel to the portion it is bonded to when bonded to the topsheet, hence the flat portions. The article suggested by Datta also meets the limitation "wherein the three-dimensional gathers are adhered to the flat folding portions so as to form flat root portions along both side portions in the longitudinal direction of the absorbent body; and wherein the folding portions constitute at least a part of the three-dimensional gathers" inasmuch as it is a portion of the gathers that is attached to the topsheet.

With respect to **claim 9**: The three-dimensional gathers disclosed by Datta comprise the folding portions and non liquid-permeable nonwoven fabrics at least partially adhered to the folding portions, and wherein the three-dimensional gathers have free ends considered herein to be structured with the non liquid-permeable nonwoven fabrics inasmuch as the nonwoven fabric is attached to the free end of the folding portion.

With respect to **claim 10**: Datta does not explicitly disclose that the folding portions and side flaps as a whole are adhered to the topsheet at said locations, it would be obvious to one of ordinary skill in the art to modify the article of Datta such that the adhesion of side flaps 40 with said folding portions therein occurs at identical locations to the disclosed locations for bonding

the flap to itself with a reasonable expectation of success to ensure the side flaps remain in position to perform the intended function of preventing leakage. The article fairly suggested by Datta thus renders the limitation of a non liquid-permeable nonwoven fabrics adhered to surfaces that are opposite to surfaces of the folding portions that face the topsheet unpatentable.

With respect to **claim 11**: The non liquid-permeable nonwoven fabrics disclosed by Datta are adhered to the backsheet 30 from adhesion starting points indicated generally at reference character 48 in Fig. 11 that are at an inner side in a width direction than folding starting points of the folding portions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761